

RULES AND REGULATIONS FOR
RHODE ISLAND DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

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SECTION 1.0

PURPOSE AND AUTHORITY

1.1 Purpose

The purpose of these rules is to ensure that Disadvantaged Business Enterprises (DBEs) certified in the State of Rhode Island have an equitable opportunity to compete for Rhode Island Department of Transportation (RIDOT) contracts and subcontracts; to ascertain the ability of DBEs and joint-ventures involving DBEs to perform the work for which they wish to contract; to set procedures to monitor DBE performance on RIDOT's contracts; and to set procedures to sanction and/or debar contractors and subcontractors found to have violated State and Federal regulations.

1.2 Authority

The authority for these rules is pursuant to the provisions of R.I.G.L. 42-35-1 and 37-14.1-1, in accordance with Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 and 49 C.F.R. Part 23.

SECTION 2.0

DEFINITIONS

2.1 Affirmative Action

Taking specific steps to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve DBEs fully in contracts and programs funded by the Department.

2.2 Certifying Agent

Rhode Island Department of Economic Development or any department designated by the RIDOT as its certifying authority.

2.3 Compliance

The condition existing when a contractor or subcontractor has met and implemented the requirements of this part.

2.4 Contract

A mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of these regulations, a lease is a contract.

2.5 Contractor

One who participates, through a contract, in any program covered by these regulations.

2.6 Debarment

Action taken after an opportunity to be heard as provided under these regulations to deny firms violating these regulations from participation in RIDOT projects.

2.7 Department or RIDOT

The Rhode Island Department of Transportation, including its operating elements.

2.7 Disadvantaged Business Enterprise or DBE

A small business concern, as defined pursuant to section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more minorities or women. This definition applies only to financial assistance programs. For the purpose of these regulations, owned and controlled means a business:

- (a) Which is at least 51 per centum owned by one or more minorities or women or, in the case of publicly owned business, at least 51 per centum of the stock of which is owned by one or more minorities or women; and
- (b) Whose management and daily business operations are controlled by one or more of such individuals.

2.9 DBE Coordinator

The official designated by the head of the Department element to have overall responsibility for promotion of disadvantaged business enterprise in his/her Departmental element, the Chief EEO Compliance Officer.

2.10 Joint Venture

An association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

2.11 Lessee

A business or person that leases, or is negotiating to lease, property from the Department on the Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

2.12 Minority

A person who is a citizen or lawful permanent resident of the United States and who is:

- (a) Black (a person having origins in any black racial groups of Africa);
- (b) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- (c) Portuguese (a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race);
- (d) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands);
- (e) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America); or
- (f) Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

2.13 Mentor/Protégé Agreement

A concept which allows prime contractors to enter into a formal relationship with a DBE for the purpose of providing training and development to these firms.

2.14 Non-compliance

The condition existing when a contractor or subcontractor has failed to implement the requirements of these regulations.

2.15 Prime Contractor

The individual, firm or corporation contracting with the State Purchasing Agent, Division of Purchases, State Department of Administration for the performance of prescribed work.

2.16 Set-aside

A technique which limits consideration of bids or proposals to those submitted by DBEs.

2.17 Subcontractor

One who participates, through a subcontract, in any program covered by these regulations.

2.18 Supplier

A supplier must be a regular dealer, which means being a regular, established supplier of bulk goods supplies a product on a regular basis to the public, not on only an ad hoc basis in relation to a particular contract. The firm must either maintain an inventory or have possession of distributions equipment.

SECTION 3.0

DBE PROGRAM POLICIES AND GUIDELINES

3.1 Methods of Contracting

(a) Goals:

RIDOT's program goals consist of two types: (1) overall department goal and (2) individual project goals, established on a case-by-case basis. The methodology used to establish these goals is, in part, based upon projected contracting opportunities. This would include a review of all proposed road and bridge projects for the fiscal year. A committee comprised of individuals from Design, Construction Operations and Civil Rights develop reasonable individual project goals based upon a review of: (1) contract items; (2) past DBE utilization; (3) availability of certified DBE firms; and (4) an analysis of the capabilities and capacity of the DBE firms. Prior to implementation, this plan is approved by the Director of Transportation and the Federal Highway Administration. A copy of the approved plan is filed with the Department of Administration's Office of Purchases.

(b) Set-Asides:

In accordance with Title 37 Chapter 2-9 and title 37 Chapter 14.1-6 and -7 (R.I.G.L.), RIDOT will solicit bids directly from DBEs for RIDOT projects identified as suitable for competitive bidding among DBEs. Pursuant to 49 C.F.R. Part 23 of the federal regulations, set-asides shall be used only where at least three DBEs exist with capabilities consistent with contract requirements, so as to permit competition, and the projects selected will be based on the criteria and analysis described in section 3.1(a), above.

3.2 DBE Stable Workforce Guidelines

As a DBE certified by the State of Rhode Island, a firm may be considering participation, or may already have participated in, some of the Department's federally assisted highway construction projects. DBE participation in these construction contracts is based on the organization's ability to perform a commercially useful function.

A DBE is considered to perform a commercially useful function when it is responsible for the execution of specific contract items by actually performing, managing, and supervising the work involved. DBEs are expected to control daily operations from start to completion of its subcontracted items. This includes managing its own workforce.

The use of common workforce is a normal industry practice. However, for obvious reasons, no DBE ought to rely wholly upon the workforce of prime contractors. Instead, the DBE should request help from the respective trade unless and the Department's trainee officer to develop work crews.

The stability of essential personnel, such as supervisors and managers, is one of the criteria that we utilize to evaluate the stability of the workforce. A stable workforce indicates that the DBE subcontractor is viable, legitimate and does carry out a commercially useful function.

At pre-construction conferences, DBEs are advised to provide the Resident Engineer supervising the project with a list of names of employees expected to work on the contract. DBEs may also be required to submit a current listing of employees to the EEO Office. The list must contain each worker's job classification, including foremen and others serving in a supervisory capacity, and date of hire with the DBE organization. This roster would be indicative of DBE's stable workforce.

3.3 Commercially Useful Function Guidelines

The Department can only credit transactions with DBEs which have performed a commercially useful function in relation to contracts.

A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work involved. To determine whether a DBE is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, normal industry practices, and other relevant factors. Set forth below are the guidelines for commercially useful functions in the cases of supply, trucking, and subcontracting:

(a) Suppliers:

A supplier is performing a commercially useful function when it packages, i.e. takes quotes from several manufacturers, and/or sells from its own inventory in order to provide one or more items to a contractor. A supplier may own a franchise and/or may be a factory representative to one or more manufacturers. Consistent with a contractor's probable needs, a supplier, not a contractor, may place orders for production with manufacturers.

"Pass through" supply operators occur when the contractor decides what items shall be bought from what sources and/or agrees directly with the manufacturer or some other non-DBE party to schedule delivery and/or directly effects adjustments and/or simply routes the money and purchase

orders through the DBE is not a commercially useful function and will not be counted toward contract goals.

Contractors may count expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs are regular dealers and assume the actual and contractual responsibility for the provision of the materials and supplies. The entire expenditure to a DBE manufacturer (supplier that produces good from raw materials or substantially alters them before resale) may be counted. Sixty percent (60%) of expenditures to DBE suppliers that are regular dealers and not manufacturers may be counted provided that the supplier performs a commercially useful function in the supply process. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation.

(b) Trucking:

A DBE which owns trucks suitable for the customary hauling requirements of a construction project may provide trucking services consistent with the following:

- ?? Sources - A DBE may find and hire owner/operators to supplement its own equipment. A DBE may find and hire trucks which are of another party's fleet except as limited herein.
- ?? Quantities - There is no limitation on the number of units which the DBEs find in the market place and deploy to meet their trucking commitments. There is a requirement that one or more trucks actually owned by the DBE be present on the very job site when the DBE is providing these services.
- ?? Management - The DBE must be responsible for finding and engaging any and all trucks which it does not own and yet deploys on a Federal-Aid contract. The DBE is responsible for overall scheduling. Overall scheduling does not mean hourly direction of the trucks on the projects since this is customarily left to the contractor who has purchased these services. The DBE is responsible for repair/replacement of breakdowns.
- ?? Billing - Trucks owned by the DBE as well as any which the DBE has rented or leased from a fleet owner may not be placed on the contractor's payroll. Consistent with normal

practices, owner/operator's provided by the DBE may be placed directly on the contractor's payrolls. Billing for the services of trucks owned by the DBE and those rented/leased from a fleet owner, must be performed by the DBE as an aspect of overall management.

?? Fueling - In keeping with normal industry practice, the fueling of the trucks furnished by the DBE may be handled by the contractor with billing adjustments. This practice is not inconsistent with the requirement that the DBE exercise overall management.

It is NOT a commercially useful normal function for a DBE trucking company to rent trucks from the prime contractor or their subcontractor in order to service one or more projects under contract by said prime contractor or subcontractor with the Department.

(c) Subcontractor:

A subcontractor arrangement is considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present:

- ?? Compensation is related to the amount of work accomplished rather than being on an hourly basis.
- ?? Choice of work methods, except as limited by the specifications, furnishing and controlling labor and equipment are exercised by the subcontractor with only general supervision being exercised by the prime contractor.
- ?? The subcontractor's personnel involved in the direct operation are under the subcontractor's direct supervision and are included on the subcontractor's payroll. Special provisions can exist which, under limited conditions, allow specialized personnel not normally employed by the subcontractor to join the subcontractor's forces.
- ?? Second tier subcontracting will only be approved in accordance with normal industry practice and when the type of work differs from work which the DBE usually performs.

All factors pertaining to the situation shall be considered together thus no one condition or factor alone will indicate whether or not a subcontract actually exists. A DBE may need to lease/rent equipment, except for over the road trucks, and/or augment its workforce with additional skilled personnel in order to perform certain subcontractor work. The DBE is required to arrange for the necessary equipment through rental/leasing

agreements, if applicable. (Off the road trucks, such as "Euclids" may be rented/leased from the prime contractor even though the commercially useful function guidelines prohibit rental/lease of over the road trucks from the prime.) Likewise in limited instances, the prime may provide some, but not all personnel to the DBE when the following conditions are present:

- ?? The personnel must have a specialized expertise which has not been mastered by the DBE's own skill/supervising/managerial personnel.
- ?? Such personnel must be placed on the DBE's payroll and come under the direct supervision of the DBE for the performance of the particular subcontract work.
- ?? The special deployment of such personnel must be accomplished within the framework of a mentor-protégé agreement; or for emergency purposes, by change order. All instances of combining personnel must be for developmental purposes where teaching/demonstration/consulting to the DBE is to occur.
- ?? Long term, continual (e.g. from one contract to another) or chronic use by a DBE firm, of personnel normally employed by another specific firm, lacking a mentor-protégé agreement which is being carried out in good faith is not consistent with the commercially useful function guidelines.
- ?? To place entire crews on the DBE's payrolls when such personnel are normally employed by another specific firm is not consistent with the commercially useful function guidelines.
- ?? A DBE may need to lease/rent equipment, except for over the road trucks, in order to be properly equipped to execute the work of a mentor-protégé agreement. In such cases where the DBE has investigated several possible sources of such equipment within a reasonable geographical area to the project, the DBE may find the best offer was made by the prime contractor or another subcontractor on the project. In such cases, the DBE may rent/lease such equipment from the prime or another contractor; providing also that the use of such equipment is material to demonstrating/teaching objectives set forth in the mentor-protégé agreement. Thus, the DBE's normal employees, and not those temporarily furnished by the prime contractor, or another subcontractor, shall be the equipment's operator for the bulk of the time during which the equipment is used in the work of the subcontracts embraced by the mentor-protégé agreement.

DBE's use of prime contractor's or another subcontractor's equipment effected improperly and/or without development input will not be considered consistent with the commercially useful function guidelines.

3.4 Good Faith Efforts

Acknowledge, sign, and submit a "Disadvantaged Business Enterprise Goal Attainment Certification Affirmative Action Certificate" with each bid.

When the goal established by the Department is met or exceeded, the apparent low bidder shall present documentation showing who and what type of DBE is being utilized, and to what extent by the 10th day local time after the bid opening, or mail it to the Department's Contracts & Specifications Office.

When the documentation required is not provided by the apparent low bidder within the time specified, the bid will be rejected and the next lowest bidder will be notified to do the same as described above.

When the goal established by the Department is not met, the contractor must demonstrate good faith efforts to meet the DBE contract goals. The low bidder must demonstrate that efforts made were those that a contractor actively and aggressively seeking to meet the goals established by the Department would make, given all relevant circumstances.

?? The following are the kinds of efforts that may be taken, but are not deemed to be exclusive or exhaustive. The Department will consider other factors and types of efforts that may be relevant:

- ?? Efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal, including, where appropriate, but not limited to, breaking down contracts into economically feasible units to facilitate DBE participation. Selection of portions of work are required to at least equal the goal for DBE utilization specified in this contract.
- ?? Written notification at least fifteen (15) calendar days prior to the opening of bid soliciting individual DBEs interested in participation in the contract as a subcontractor, supplier or service agency and for what specific items or type of work.
- ?? Written notification to disadvantaged economic development assistance agencies and organizations which provide assistance in recruitment and placement of DBEs, of the type of work, supplies or services being considered by DBEs on this contract.
- ?? Efforts made to negotiate with DBEs for specific items of work:
 - ?? The names, addresses, telephone numbers of DBEs who were contracted, the dates of initial contact and whether

initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested, personnel or phone contacts are expected;

- ?? A description of the information provided to DBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - ?? A statement of why additional agreements with DBEs were not reached; and
 - ?? Documentation of each DBE contacted but rejected and the reasons for the rejection.
- ?? Absence of any agreement between a contractor and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders.
- ?? Efforts made to assist the DBEs that need assistance in obtaining bonding, insurance or lines of credit required by the contractor.
- ?? Documentation that qualified DBEs are not available, or not interested.
- ?? Advertisement in general circulation media, trade association publications, disadvantaged-focus media of interest in utilizing DBEs and area of interest.
- ?? Efforts to effectively use the services of available disadvantaged community organizations; disadvantaged contractors' group; local, State, and Federal disadvantaged business assistance offices; and other organizations that provide assistance in recruitment and placement of DBEs.
- ?? The following are examples of actions that shall not be used as justification by the contractor for failure to meet the DBE contract goals:
- ?? Failure to contract with a DBE solely because the DBE was unable to provide performance and/or payment bonds.
 - ?? Rejection of a DBE bid or quotation based on price alone.
 - ?? Equipment idled by contract with the DBE.
 - ?? Failure to contract with a DBE because the DBE will not agree to perform items of work at the unit price bid.
 - ?? Rejection of a DBE because of its union or non-union status.

?? Failure to contract with a DBE because the contractor normally would perform all or most of the work in the contract.

?? Restricting efforts to mailing of letters.

3.5 Program Participation Term

Any firm having participated in the DBE program for the maximum of eight years shall be "graduated" from the program and deemed ineligible for participation after this eight-year period. Said period shall begin to run at the date of original certification by the DBE's home state.

SECTION 4.0

DBE CONTRACT APPROVAL PROCEDURES

- 4.1 At the time the apparent successful bidder submits his/her DBE participation information (including good faith effort documentation if necessary), only certified DBEs will be counted toward achieving the DBE goal. Those firms which are still attempting to become certified DBEs should not be considered in any capacity when evaluating the apparent low bidder's DBE participation information unless already certified in another State. In those cases, the contracting State may recognize the certification by a sister State. In the instance where a State accepts a low bidder's good faith effort, it is expected that the State will require the contractor to continue his/her efforts to increase his/her DBE participation after award of the contract.

These rules permit the Department of Transportation to deny approval and/or reject any DBE not performing a commercially useful function or a DBE not in compliance with the policies and guidelines of the program stated herein.

4.2 Required Submissions from the Contractor

NOTE: If the DBE is to perform as a prime contractor, the following information must be submitted to the DBE Coordinator prior to contract award. If the DBE is to perform as a subcontractor, the following information must be submitted by the prime contractor prior to contract award:

- (a) A list of equipment in the contractor's possession and which the DBE proposes to use on the contract if awarded to them. If equipment is to be rented, lease agreements and paid invoices with cancelled checks must be made available for each piece of equipment rented for each contract.

In the event that equipment is leased with operator, a lease must be available showing the hourly rate, which includes the operator rate. In such instances, payroll records are not necessary. However, in the event equipment is leased without an operator, and the operator is hired by the contractor, payroll records must be available for that individual operating the equipment.

Said rentals by a subcontractor shall be from a source other than the prime contractor, unless first option is stipulated by the prime contractor in the subcontract agreement.

- (b) The name and qualifications of the superintendent or supervisory personnel to be assigned to the major features of work.
- (c) The number of proposed trainees to be trained in each classification and training programs as stated in the required contract provisions for federal aid projects (Training Special Provisions, page 15 - par. 3).
- (d) The name of the individual who will act as equal employment opportunity officer for this contractor.
- (e) A copy of necessary licenses, if any are required. In the event a license is not in hand, state when license will be obtained (i.e. arborists, asbestos removal, trucking/transporting, etc.).
- (f) A copy of the bid submission given to the prime contractor.

4.3 Mentor/Protégé

A mentor/protégé agreement must be submitted to the External Equal Opportunity Office for approval prior to the award, if applicable.

4.4 Review Procedure

The DBE Coordinator will review information submitted in reference to the following questions:

- (a) Is the firm a qualified DBE, which is defined as one that is currently certified by the Rhode Island Department of Economic Development?
- (b) What is the actual value of the DBE contract?
- (c) What is the nature of the work to be performed by the DBE? The commercially useful function guidelines must be adhered to (see section 7.2).

- (d) Is the DBE a supplier of materials and/or a manufacturer? If the DBE is a regular dealer only 60% of expenditures may be counted toward the DBE goal, provided that the supplier performs a commercially useful function in the supply process. The entire expenditure may be counted toward the DBE goal only if the DBE supplier is a manufacturer that produces the goods from raw materials or substantially alters them before resale.
- (e) Have there been complaints filed against the DBE named in the subcontract?
- (f) Review the DBE's work history on other RIDOT projects. A past history of non-performance or voluntary forfeiture of work may be the basis of non-approval.
- (g) Review the DBE subcontract agreement for partial items of work, labor only contracts, etc.

4.5 Due Process Procedure

The DBE Coordinator will make a recommendation to the Chief Engineer within five (5) working days of the conclusion of its investigation.

- (a) In the event of non-approval by the DBE Coordinator, the contractor may appeal in writing to the Chief Engineer within five (5) working days of receipt of notice of non-approval. Statement must include grounds for further review.
- (b) In the event that the Chief Engineer upholds the decision not to grant approval, the contractor may write to request final review from the Director of RIDOT within ten (10) working days of receipt of notice from the Chief Engineer.
- (c) The Director's decision shall be rendered within ten (10) working days. Appeals of the Director's decision must be in accordance with R.I.G.L. 42-35-1, The Administrative Procedures Act.

SECTION 5.0

MONITORING AND DEBARMENT

5.1 Overview

The purpose of these procedures is to insure that contractors, subcontractors and suppliers doing business with the Rhode Island Department of Transportation, and about whom information has been received regarding possible violations of state and/or federal law and/or contracting provisions regarding DBEs, receive fair treatment in all RIDOT investigations and decisions regarding such information.

The method outlined below will insure such fair treatment by providing a vehicle for obtaining complete information as well as allowing all parties full opportunity to present their case.

5.2 Violation

The RIDOT DBE Coordinator through field investigation, or other means, becomes aware that a DBE firm and/or prime contractor may have violated 49 CFR Part 23, R.I.G.L. 37-14.1-1, State DBE Certification Requirements or RIDOT subcontracting provisions.

5.3 Investigation

The DBE Coordinator investigates the possible violation by interviewing all parties said to be involved, gathering documentation etc. Based on the information received, the DBE Coordinator will decide:

(a) There is no violation.

(b) There is an apparent violation:

?? resolvable through means agreeable to all parties involved.

?? a formal factfinding meeting is necessary.

5.4 Formal Factfinding

The purpose of this step is to formally gather the facts involved in a particular case. Transcripts will be made available to all parties in attendance when requested and at their own expense.

The meeting will be scheduled and conducted by the DBE Coordinator. The DBE firm and/or prime contractor will receive a statement of the charges against it at the same time it is notified of the meeting. The parties to attend the meeting will

include, the DBE firm and/or prime contractor accused of a violation, their legal counsel, if desired, all individuals able to provide evidence regarding the situation, RIDOT legal counsel and other appropriate RIDOT officials. At the meeting, the RIDOT Coordinator will present evidence concerning the violation and ask the accused party to respond and/or present information rebutting such evidence. Within fourteen (14) working days after the conclusion of the meeting, the DBE Coordinator will decide:

- (a) There is no violation.
- (b) There is an apparent violation:

- ?? resolvable through means agreeable to all parties involved.

- ?? a show cause hearing is necessary.

5.5 Show Cause Hearing

The purpose of this step is to provide the DBE firm and/or prime contractor the opportunity to formally rebut charges of a violation of 49 CFR Part 23, State DBE Certification Requirements or RIDOT subcontracting provisions before an impartial board.

All parties previously invited to the factfinding meeting will be invited to the Show Cause Hearing. Any other parties who have additional evidence will also be invited.

A Board composed of RIDOT's Chief of Construction Operations, RIDOT's Chief of Contracts & Specifications, and Rhode Island Department of Administration's Assistant Administrator of State EEO will listen to the facts of the case.

The RIDOT Legal Counsel will present the facts of the case through witnesses and/or documentary evidence.

The firm in question will be given the opportunity to rebut the facts through their own witnesses and/or documentary evidence.

Within fourteen (14) working days of the conclusion of the hearing, the board will take one or both of the following actions:

DBE Contractors:

- (a) Render a written report to the Director of RIDOT:

- ?? Stating there is no violation.

- ?? Stating there is a violation and:
 - ?? resolving the issue through means agreeable to both parties.
 - ?? requesting that the firm be debarred (see section 6.0 of these regulations).
 - ?? requesting that the firm is sanctioned (see section 6.0 of these regulations).

(b) Render a written report to the Minority Business Assistance Coordinator for the Rhode Island Department of Economic Development:

- ?? Stating there is no violation
- ?? Stating there is a violation and:
 - ?? resolving the issue through means agreeable to all parties involved.
 - ?? requesting that decertification of the DBE firm be initiated.

Non-DBE contractors:

(a) Render a written report to the Director of RIDOT:

- ?? Stating there is no violation.
- ?? Stating there is a violation and:
 - ?? resolving the issue through means agreeable to both parties, or
 - ?? requesting that the firm be debarred (see section 6.2 of these regulations), and/or
 - ?? requesting that the firm be sanctioned (see section 6.0 of these regulations).

Within ten (10) working days of the Board's report, the Director of RIDOT will make a final decision in writing and copies of that decision will be sent to all parties. All decisions of the Director may be appealed in accordance with R.I.G.L. 42-35-1.

SECTION 6.0

SANCTIONS AND DEBARMENT

6.1 Sanctions

- (a) If at any time during the life of the contract it is determined that the contractor is not making a satisfactory effort to fulfill the DBE requirement, the Department may withhold payment of monthly estimates.
- (b) Failure by the contractor to meet the minimum goal established in II.A.(2) of the contract provision will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the above specified percent, and subtracting the dollar value of the work actually performed by DBE contractors, unless an exception or waiver was previously granted.
- (c) Contractors and subcontractors are advised that failure to carry-out the requirements shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department or such remedy as the Department deems appropriate.

6.2 Debarment

- (a) The Director of RIDOT may at the request of the Show Cause Board, debar a contractor and/or subcontractor. The Director shall furnish written notice to the contractor and/or subcontractor at least five (5) days before the effective date of debarment. The notice shall state:
 - ?? That a debarment has been imposed.
 - ?? The effective date of the debarment.
 - ?? The facts giving rise to the debarment.
 - ?? The cause or causes relied upon for the debarment.
- (b) Generally, except where paragraph (c) and (d) of this section applies, the following periods of debarment may be imposed:
 - ?? Up to three (3) years for any debarment action; or
 - ?? Where the debarment is based on debarment by a federal agency, a period not to exceed the remainder of the original debarment period.

- (c) If a contractor or subcontractor was previously debarred:
 - ?? for any cause and is again debarred, the second debarment may be up to six (6) years; or
 - ?? because of a criminal conviction or a willful violation and is again debarred because of a criminal conviction or willful violation, the second debarment may be for an indefinite period; or
 - ?? twice for the same cause, any subsequent debarment may be for an indefinite period.
- (d) The notice of a proposed debarment shall be given within one year of:
 - ?? a criminal conviction and sentencing; or
 - ?? completion of an investigation or audit which is a basis for the debarment action; or
 - ?? discovery of the cause on which the debarment action is based, which ever occurs last.

6.3 Effect on Current Contracts

- (a) The Director of RIDOT may continue contracts or subcontracts in existence of the time a contracting and/or subcontractor is debarred. A decision as to termination by the Director shall be made only after review of all the facts and circumstances surrounding the debarment as they affect the responsibility of the contractor and/or subcontractor.
- (b) Contracts shall not be renewed or otherwise voluntarily extended by the Director of RIDOT once the contractor and/or subcontractor has been debarred.

6.4 List

The Director of RIDOT shall maintain a list of all persons, partnerships, corporations, or associations who have been debarred in accordance with the procedures prescribed in this article. This list shall be made available for public inspection.

SECTION 7.0

SEVERABILITY

- 7.1 If any provision of these rules and regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not effect The provisions or application of the rules and regulations which can be given effect, and to this end the provisions of these rules and regulations are declared to be severable.

SECTION 8.0

APPLICATION

- 8.1 These rules and regulations will take effect upon filing with the Secretary of State.

I CERTIFY THAT THE ABOVE IS A TRUE COPY.

DATE

William D. Ankner, Ph.D.
DIRECTOR